

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO. 49 OF 2001

BP TANZANIA LIMITED.....PLAINTIFF
VERSUS

NYANZA CO-OPERATIVE
UNION (1984) LIMITED.....DEFENDANT

J U D G M E N T

NSEKELA, J:

The plaintiff, BP Tanzania Limited filed this suit on the 22/3/2001 against the defendant, Nyanza Cooperative Union (1984) Limited. The plaintiff is claiming from the defendant the sum of Tshs.49,033,135/16 being the value of an assortment of petroleum products that the defendant had ordered from the plaintiff and delivered to the defendant on divers dates between 15/11/99 and 30/11/2000 inclusive. It is alleged in the plaint that the said goods were to be paid for immediately after delivery, but to date the defendant has not settled the outstanding amount despite repeated demands from the plaintiff to that effect. The defendant was served with summons for appearance and filing written statement of defence on the 26/3/2001 notifying the defendant to file written statement of defence within twenty-one days of service of the notice being served upon the defendant. The suit was mentioned on the 18/4/2001. The defendant did not enter appearance and did not file written statement of defence although the Court record

showed that the defendant had been served on the 26/3/2001. Despite this fact the Court ordered that the defendant be re-served with summons and that the suit be mentioned as the 2/5/2001. On 2/5/2001, Mr. Galati, learned advocate for the plaintiff duly entered appearance but once again the defendant did not show up despite being served with notice on the 20/4/2001. Understandably, Mr. Galati made an application to prove the case ex-parte by oral evidence. I readily granted the prayer under Order VIII rule 14 (2) (b) of the Civil Procedure Code, 1908 which provides –

“ (2) In any case in which a defendant who is required under sub-rule (2) of rule 1 to present his written statement of defence fails to do so within the period specified in the summons or, where such period has been extended in accordance with the proviso to that sub-rule, within the period of such extension, the Court may –

(b) in any case, fix a day for ex-parte proof and may pronounce judgment in favour of the plaintiff upon such proof of this claim.”

As indicated before, the period within which to file the defence had already expired and there was no application made by the defendant to enlarge the period. On the 5/7/2001, hearing of the suit commenced and three issues were framed and recorded, namely –

(i) Did the plaintiff supply to the defendant goods worth Shs.49,033,135/16 as alleged in paragraph 3 of the plaint?

(ii) *Did the defendant pay the plaintiff for the goods so supplied by the plaintiff?*

(iii) *To what reliefs are the parties entitled to?*

The plaintiff had only one witness PW1, Thadayo Joseph Jonas Ringo, Marketing Manager for the Lake Zone which includes Mwanza Region. PW1 testified to the effect that the defendant was a customer of the plaintiff and that during the period of November 1999 to December 2000, the plaintiff supplied to the defendant oil and lubricants as evidenced by invoices collectively marked exhibit P1. The total amount in the invoices was Shs.50,393,601/92 but the defendant had a credit balance of Shs.1,360,466/76 thus leaving an outstanding balance of Shs.49,033,135/16 PW1 added that when the plaintiff demanded payment of the said outstanding amount, the defendant accepted as evidence by exhibit P2.

This case is straightforward and need not detain me long. Apart from the invoices in exhibit P1, there is exhibit P2 dated 9/11/2000 from the defendant to the plaintiff which reads in part as follows –

“ The Commercial Area Manager

BP (Tanzania) Limited

P.O. Box 599

MWANZA

Dear Sir,

Re: DEMAND NOTE FOR THE SUM OF TSHS.49,033,135/16

OWING TO YOU.

The captioned subject together with our previous conversation in your office and later in our office refers.

We are greatly intending to pay the due amount as indicated above.** As you know that our economic position at the moment is not so good but, we have already disposed some of our assets (refer Msanii Africa of 11/9/200 and 25/9/200) through a tender notice. Realization of any funds from this will be used to repay our outstanding debts, among others, **the debt owing to you BP (Tanzania) Ltd.....

We beg you please, reduce the measures you have intended on us. We will pay immediately after selling our disposed assets which is expected not later than June 2001 ...

*Betty Khamese (MB)
for General Manager”*

This letter taken together with exhibit P1 shows clearly that the defendant was indebted to the plaintiff in the sum of Shs.49,033,135/16 which remains unpaid despite the empty promise in exhibit P2 above. I have no hesitation that the plaintiff has established its claim according to law. The plaintiff is claiming interest on the judgment-debt at the commercial rate of 30% per annum from November, 1999 up to the date of judgment. The plaintiff has not led any evidence in connection with the 30% commercial rate of interest! It is certainly not reflected in the invoices in exhibit P1. Therefore in terms of Order XX rule 21 of the Civil Procedure Code, the

plaintiff is entitled to 7% interest per annum on the judgment debt from November 1999 up to date of judgment. The plaintiff has surely been deprived of the use of money that was due to him.

In the result, I do hereby enter judgment for the plaintiff as under -

- (i) The defendant shall pay to the plaintiff the sum of Shs.49,033,135/16;
- (ii) The amount of Shs.49,033,135/16 shall carry interest at the rate of 7% per annum from November, 1999 up to the date hereof;
- (iii) The defendant shall pay to the plaintiff interest at the rate of 7% per annum on the decretal amount from the date hereof until satisfaction of the debt;
- (iv) The defendant is condemned to pay costs of this suit.

It is accordingly ordered.

Sgd.

H.R. NSEKELA

JUDGE

17/08/2001